

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Order reserved on: 07 March 2023**
Order pronounced on: 24 March 2023

+ **TEST.CAS. 46/2019 & I.A. 16135/2022(Ex. Furnishing Submitting Administration Bond)**

HARISH NARAIN MATHUR & ANR. Petitioners
Through: **Mr. Kamal Bansal and Ms. Monika Verma, Advs.**

versus

STATE & ORS. Respondents
Through: **Ms. Pavitra Kaur, Adv.**

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA

ORDER

1. The present petition under Section 276 of the **Indian Succession Act, 1925¹** has been instituted for grant of probate in respect of the last Will of the Testator dated 01 August 2012. The Will has been authored by the late Smt. Aruna Mathur and stands duly registered on 29 September 2012 in the office of the Sub-Registrar-VIII, New Delhi.

2. In terms thereof, the Testator has made a bequest in favour of the petitioners in respect of Flat No. 65, Anupam Apartments, Vasundhara Enclave, Delhi-110096.

¹ The 1925 Act

The original Will dated 01 August 2012 was filed in these proceedings on 16 February 2022.

3. For the purposes of disposal of the present petition, the following essential facts alone need be noticed. Sh. Behari Narain Mathur was originally married to Smt. Sudha Mathur. The couple was blessed with two sons, namely, Sh. Harish Narain Mathur the first petitioner and Sh. Gyanesh Mathur the second respondent in these proceedings. Smt. Sudha Mathur is stated to have died in November 1963. Sh. Behari Narain Mathur is, thereafter, stated to have married Smt. Vimla Gupta @ Anuradha Mathur @ Naina Lal. The respondent no. 3 Sh. Sanjay Mathur was born out of this wedlock. The marriage between Sh. Behari Narain Mathur and Smt. Vimla Gupta ultimately ended in a divorce. Sh. Behari Narain Mathur, is, thereafter, stated to have married Smt. Aruna Mathur the Testator. However, no children were born out of the said union.

4. The petitioner no. 1 asserts that he continued to stay with his father and step mother. The respondent no. 2 is stated to have been given in adoption soon after his birth to the elder brother of Sh. Behari Narain Mathur, namely, Dr. Naresh Narain Mathur. The third respondent is stated to be settled abroad.

5. Insofar as the suit property which stands bequeathed in terms of the Will is concerned, it is disclosed that the same came to be allotted in favour of Sh. Behari Narain Mathur and Smt. Aruna Mathur on 19 July 1995. Sh. Behari Narain Mathur is stated to have died on 19 September 2010 leaving behind a registered Will dated 20 February

1996 in terms whereof he bequeathed his entire moveable and immovable properties to his wife Smt. Aruna Mathur with a life interest and those to later devolve upon the petitioners herein. The petitioner no.1 is stated to have relinquished his share in the suit property in favour of Smt. Aruna Mathur in terms of a registered Relinquishment Deed dated 18 May 2016. Pursuant to the said relinquishment, the property which forms subject matter of the Will came to be mutated solely in the name of Smt. Aruna Mathur. The Testator is stated to have passed away on 09 February 2019 leaving behind her last registered Will of which probate is sought in the present petition.

6. In terms of an order of 31 May 2019 passed in these proceedings, citations were directed to be published in the Statesman. The aforesaid direction was complied with and the necessary citation came to be published in the English edition of that newspaper on 26 July 2019.

7. The respondent no. 2 had orally conveyed his no objection to the grant of probate and which fact stands duly recorded in the order of 03 December 2019. In terms of the directions issued by the Court on that date, the second respondent has affirmed his no objection to the grant of probate in terms of an affidavit which stands placed on the record. By an order of 14 December 2020, since the respondent no.3 had chosen not to appear and the second respondent had filed an affidavit in terms noted above, the Court recorded that the proceedings were uncontested. Accordingly on 11 January 2021, evidence of Smt.

Jayanti Mala Saxena [PW-1], an attesting witness to the aforesaid Will came to be recorded. Subsequently and on 23 February 2021, Mr. Ashwani Kumar Saxena [PW-3], another attesting witness deposed in respect of the Will. The statement of Sh. Harish Narain Mathur [PW-2], petitioner no. 1 here, also came to be recorded on 01 August 2012.

8. The relevant parts of the depositions of PW-1 and PW-3 are reproduced hereinbelow: -

“PW-1

At this stage, the witness is identified by learned counsel for the petitioner. It is explained to the witness that she is under oath. Attention of the witness is drawn to affidavit dated 02.01.2021. The witness submits that the affidavit bears her signature at point A1 to A4 on every page. Affidavit is Ex.PW1/A.

The witness submits that due to typographical error the name of the other attesting witness is mentioned as Ashok Kumar Saxena in para no.3 of her affidavit and the same may be read as Ashwani Kumar Saxena. The attention of the witness is drawn to certified copy of Registered **Will** dated 01.08.2012 on record. The witness identifies her signature at point X1, X2 & X3 and the signature of Mr. Ashwani Kumar Saxena at point Y1, Y2 & Y3. The **Will** is Ex.PW1/1.

At this stage, the original registered Will has been produced/shown by the petitioner in course of Video Conferencing. Same is perused through video conferencing.

I also identify the signatures of deceased Testator Ms. Aruna Mathur at nine places at points Z1 to Z9 on the registered **Will**. We all had signed the **Will** in the presence of each other. I also identify the photographs of deceased Ms. Aruna Mathur at point B1 & B2 & photograph of myself and Mr. Ashwani Kumar Saxena at point B3.

At this stage, the witness has shown her original Aadhar Card no.260770566009 through video conferencing in token of her identity.

PW-3

(At this stage, the witness is identified by learned counsel for the petitioner. It is explained to the witness that he is under oath.

Attention of the witness is drawn to the evidence affidavit dated 02/01/2021. The e-copy of the affidavit has been shown to the witness by sharing the screen through Cisco WebEx.)

I tender my evidence by way of affidavit in examination-in-chief, which is Ex. PW3/A and the same bears my signature at point A, A1, A2 & A3.

(At this stage, the WILL is shown to the witness again by sharing the screen through Cisco WebEx.

The WILL, already Ex. PW1/1 bears the signature of the Testator late Smt. Aruna Mathur at point Z-1, Z-2, Z-3, Z-4, Z- 5 Z-6, Z-, Z-8 & Z-9.

It bears the signature of Smt. Jayanti Mala Saxena at point X-1, X-2 & X-3.

My signature on the WILL are at point Y-1, Y-2 & Y-3.

The testator late Smt. Aruna Mathur and the witness Smt. Jayanti Mala Saxena had signed on the WILL Ex. PW1/1 in my presence. We all had signed the WILL in the presence of each other.

I also identify the photograph of late Smt. Aruna Mathur at point B-1 & B-2 on the WILL. My photograph, with Smt. Jayanti Mala Saxena, is at point B-3.”

9. In terms of the directions issued on this petition, the SDM has submitted a Valuation Report in terms of which the value of the property has been placed at Rs. 1,18,75,089.06/-.

10. From the aforesaid recordal of facts, it is apparent that the proceedings have remained uncontested and that the execution of the Will has been duly proved by the attesting witnesses thereto. The

Court thus finds no impediment in the grant of probate on the present petition.

11. It may, additionally, be noted that the petitioners have sought exemption from filing an administration and surety bond since not only are they the legal heirs of the deceased, the probate petition has gone uncontested and the petitioners named as the sole beneficiaries. The exemption from filing those bonds is based on the following observations as entered by the Court in **Sanjay Suri vs. State and Ors.**²:-

“28. Considering the nature of the Testamentary and Intestate succession, the object and purpose sought to be achieved by Section 291 and thus applying the aforesaid principles of interpretation of statutes, it would be seen that Section 291 of the Act is not intended to cover within its ambit the cases of a sole beneficiary and legal heir under a Will being required to furnish administration/ surety bond. One cannot administer the estate or his own estate against himself, for which he be required to give an indemnity or administration bond. Besides, none of the purposes and objectives of Section 291 of the Act are covered or fulfilled by the execution of an administration/ surety bond by the sole inheritor or beneficiary under the Will duly proved. Such an exercise would be an exercise in futility. In the instant case if the petitioner's grandson was to mismanage or maladminister, he would be, doing so only against his own and personal interests. A right that clearly vests in him by virtue of the bequest. Hence insistence of furnishing the administration bond in the present case would not only be meaningless and without any purpose, but inconsistent with succession. Section 291 in the light of the foregoing principles of interpretation, as noticed, has to be interpreted so as not being applicable to a case of a sole beneficiary and legal heir, under a duly proved Will insofar as requirement of furnishing an administration bond is concerned.”

12. Bearing in mind the principles enunciated therein the Court finds that the exemption as prayed for would be justified in law.

² 2003 SCC OnLine Del 966

13. Accordingly, the instant petition is allowed. Subject to the petitioners filing the requisite court fee, probate along with a copy of the Will annexed shall stand granted in favour of the petitioners. The petitioners shall also stand exempted from executing or submitting any administration or surety bond.

MARCH 24, 2023

bh

YASHWANT VARMA, J.

